



**BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION**

**Advisory Opinion**

Section 19A-12(b)<sup>1</sup> of the ethics law states that, without a waiver from the Ethics Commission, a public employee cannot be employed by, or own more than one percent of, any business that negotiates or contracts with the County agency with which the public employee is affiliated. The Department of Health and Human Services (DHHS) wants to contract with a member of the Mental Health Advisory Commission (MHAC) to develop a plan for a proposed Office of Consumer Affairs for Mental Health. We conclude that the MHAC member must seek and obtain a waiver under §§ 19A-8(a) and (b) before contracting with DHHS because MHAC is affiliated with DHHS. MHAC is staffed by DHHS employees, § 24-39, and performs a watchdog function under state and county laws<sup>2</sup> over publicly-funded mental health services provided by DHHS/Core Service Agency.

This watchdog function also leads to conflict under § 19A-11(a)(1)(B), requiring the MHAC member to seek and obtain a waiver under § 19A-8(a). The ethics law prohibits a public employee from participating in any matter that affects, in a manner distinct from its effect on the public generally, business in which the public employee holds an economic interest. DHHS states that the Core Service Agency, an agency within DHHS, will supervise the contract. The MHAC member cannot “participate in a matter” (performing his watchdog function over publicly-funded mental health services provided by DHHS/Core Service Agency) while that same agency supervises him on a contract.

If DHHS wishes to proceed with the contract, the MHAC member (not the department) must seek and obtain the waivers from the Ethics Commission described above. This request should explain (1) the function of the MHAC, especially its watchdog function over DHHS and the Core Service Agency, and (2) how the Core Service Agency will supervise the MHAC member under the contract. Finally, the request should also address whether § 24-34(c) is implicated (which generally prohibits an MHAC member from receiving direct or indirect monetary benefits from State Department of Health and Mental Hygiene grants or contracts).

FOR THE COMMISSION:

A handwritten signature in black ink, reading "Elizabeth K. Kellar".

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Elizabeth K. Kellar, Chair

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<sup>1</sup> Except where indicated, all references are to the Montgomery County Code (1994), as amended.

<sup>2</sup> § 24-38; Md. Code Ann., Health-Gen. I §§ 10-312, 10-1202(d)(2) & (3).